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6                   IN THE UNITED STATES DISTRICT COURT FOR THE  
7                   EASTERN DISTRICT OF CALIFORNIA

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9                   TIMOTHY BUFORD,    )                   No. CV-F-02-6187 OWW/DLB P  
10    )  
11   )                   ORDER DENYING PLAINTIFF'S  
12   )                   MOTION FOR RECONSIDERATION  
13   )                   (Doc. 80)  
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Plaintiff, a state prisoner proceeding *in pro per*, moves for reconsideration of the Order filed on April 27, 2007 dismissing Plaintiff's complaint, revoking his *in forma pauperis* status, and directing Plaintiff to pay the \$150.00 filing fee.

Plaintiff's motion for reconsideration is DENIED.

Plaintiff argues that the civil action filed in this court, *Buford v. Fresno County Jail*, No. CV-F-00-5542, should not count as the third "strike" pursuant to 28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the

1                   prisoner has, on 3 or more prior occasions,  
2                   while incarcerated or detained in any  
3                   facility, brought an action or appeal in a  
4                   court of the United States that was dismissed  
5                   on the grounds that it is frivolous,  
                 malicious, or fails to state a claim upon  
                 which relief may be granted, unless the  
                 prisoner is under imminent danger of serious  
                 physical injury.

6                   The Complaint in *Buford v. Fresno County Jail* was filed on  
7                   April 6, 2000. Plaintiff's address was listed as the Solano  
8                   County Jail, Fairfield California. Plaintiff contends, however,  
9                   that he was released from the Fresno County Jail on April 3, 2000  
10                  and was re-arrested and re-booked into the Fresno County Jail on  
11                  April 4, 2000. In his Objections to the Findings and  
12                  Recommendation, Plaintiff asserted that "[t]he case, Buford v.  
13                  Fresno County Jail was given to Plaintiff's jail officials at or  
14                  briefly bore April 3, 2000 "release date." Plaintiff argues:

15                  These facts substantiate and differentiate  
16                  the attributing factors ill-holding the  
17                  Plaintiff to an invalid 'third-strike' simply  
                 because during the mailing and actual filing  
                 of the Buford vs. Fresno County Jail,  
                 complaint Plaintiff was 'released' from  
                 custody and re-arrested between April 3 and  
                 April 4, 2000... As such, continuous custody  
                 is not the applicable standard to which this  
                 issue should be resolved and that the actual  
                 filng time, mailing time and receiving time  
                 of the complaint by the Court literally and  
                 in the culmination of facts that avoid 'third  
                 strike applicability' to the Plaintiff which  
                 only exist because the defendants contend  
                 that 'the plaintiff "was incarcerated" during  
                 the filing of the Buford v. Fresno County  
                 Jail complaint.

24                  Plaintiff's statement of grounds for reconsideration as well  
25                  as the docket in No. CV-F-00-5542, demonstrate that he was  
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1 incarcerated when he filed the Complaint in *Buford v. Fresno*  
2 *County Jail*, No. CV-F-00-5542. That Plaintiff presents documents  
3 from which it might be inferred that he was briefly released from  
4 the custody of the Fresno County Jail sometime during the evening  
5 of April 3, 2000 until sometime during April 4, 2000 does not  
6 negate the fact of incarceration at the time the action was  
7 commenced.

8 **CONCLUSION**

9 For the reasons stated above, Plaintiff's motion for  
10 reconsideration is DENIED.

11 IT IS SO ORDERED.

12 Dated: May 30, 2007

13 /s/ Oliver W. Wanger  
14 UNITED STATES DISTRICT JUDGE

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